

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, *et al.*

Plaintiffs,

vs.

TYSON FOODS, INC., *et al.*

Defendants.

Case No. 05CV0329JOE-SAJ

ANSWER OF SEPARATE DEFENDANTS
GEORGE’S, INC. AND GEORGE’S FARMS, INC.

Come now the separate Defendants, George’s, Inc., and George’s Farms, Inc., (“George’s”), and for their Answer to the First Amended Complaint of plaintiffs, state and allege:

NATURE OF THE CASE

1. That the allegations in Paragraph 1 of the First Amended Complaint state conclusions of law to which no response is required. George’s also lacks sufficient knowledge to properly respond to the conclusory, inflammatory, and improper rhetoric set forth in Paragraph 1 of the plaintiffs’ First Amended Complaint, most of which is calculated to attract maximum media attention rather than state proper legal allegations. Moreover, George’s denies that it is “legally responsible” for the farming activities of independent contract growers who own land, operate farms, raise poultry, and typically perform other agricultural activities in the Illinois River Watershed (“IRW”). Additionally, George’s denies that its “practice” is “to store and dispose of chicken litter on the lands within the IRW.” It denies that the land application of poultry litter, standing alone, has caused injury to the waters of the IRW. George’s denies that “the State of Oklahoma” has brought this action; rather, Drew Edmondson has initiated this action after having isolated other responsible Oklahoma policymakers from the decision to bring this litigation so as to

attract media and political attention to himself. George's denies familiarity with the term "Poultry Integrator Defendants" or with the number of chickens and turkeys owned and raised by "Poultry Integrator Defendants" or the purposes for which they are raised by "Poultry Integrator Defendants". George's denies generally and specifically each and every remaining allegation, statement, and assertion contained and set forth in Paragraph 1 of the First Amended Complaint of plaintiffs, including particularly the characterizations of poultry litter implied or stated and the alleged results of land application of poultry litter implied or stated in the said Paragraph 1.

JURISDICTION AND VENUE

2. That George's denies that jurisdiction and venue are proper pursuant to 28 U.S.C. § 1331, 1367; 42 U.S.C. § 9613(b) and 6972(a); 42 U.S.C. 9601; or the federal common law of nuisance, and George's denies generally and specifically that the acts alleged in the First Amended Complaint give rise to jurisdiction or venue pursuant to any of those provisions, and further denies the applicability of those provisions or the existence of federal common law nuisance.

3. That George's admits that the Illinois River Watershed ("IRW"), including the lands, waters, and sediments therein, is situated, in part, in the Northern District of Oklahoma and in part in the State of Arkansas. George's denies generally and specifically each and every remaining allegation, statement and assertion contained and set forth in Paragraph 3 of the First Amended Complaint, and moreover asserts that the citizens of this venue should be disqualified as a matter of law from serving as jurors in this case because they are parties in interest, and that due process under the federal and state constitutions would prohibit this Court as being the proper venue for adjudication of this action.

4. That George's is a foreign corporation and does business in the State of Oklahoma, but George's however denies each and every allegation, statement and assertion contained in Paragraph 4 of the First Amended Complaint as the basis for personal jurisdiction in this action, and George's will also contest personal jurisdiction and venue in this case on grounds unassociated with the allegations of Paragraph 4.

THE PARTIES

5. That George's denies generally and specifically each and every allegation contained and set forth in Paragraph 5 of the First Amended Complaint.

6. That the allegations of Paragraph 6 of the First amended Complaint do not apply to George's, and George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained therein. Accordingly, George's denies the allegations of Paragraph 6.

7. That the allegations of Paragraph 7 of the First amended Complaint do not apply to George's, and George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained therein. Accordingly, George's denies the allegations of Paragraph 7.

8. That the allegations of Paragraph 8 of the First amended Complaint do not apply to George's, and George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained therein. Accordingly, George's denies the allegations of Paragraph 8.

9. That the allegations of Paragraph 9 of the First amended Complaint do not apply to George's, and George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained therein. Accordingly, George's denies the allegations of Paragraph 9.

10. That the allegations of Paragraph 10 of the First amended Complaint do not apply to George's, and George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained therein. Accordingly, George's denies the allegations of Paragraph 10.

11. That the allegations of Paragraph 11 of the First amended Complaint do not apply to George's, and George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained therein. Accordingly, George's denies the allegations of Paragraph 11.

12. That the allegations of Paragraph 12 of the First amended Complaint do not apply to George's, and George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained therein. Accordingly, George's denies the allegations of Paragraph 12.

13. That the allegations of Paragraph 13 of the First amended Complaint do not apply to George's, and George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained therein. Accordingly, George's denies the allegations of Paragraph 13.

14. That the allegations of Paragraph 14 of the First amended Complaint do not apply to George's, and George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained therein. Accordingly, George's denies the allegations of Paragraph 14.

15. That Separate Defendant, George's, Inc., admits it is an Arkansas corporation with its principal place of business in Arkansas. Moreover, it denies that it "is responsible for the poultry waste created by . . . poultry growing operations, its handling and storage, and its disposal on lands within the IRW, . . ." George's also denies any resulting injury to the IRW, its biota, lands, waters and sediments. George's denies familiarity with the term "Poultry Integrator Defendant". George's acknowledges that during the relevant years, it was engaged in the business of breeding chickens, producing chicken eggs, hatching chickens, processing chickens for human consumption, and

selling processed chicken products. George's also contracted with independent contract growers to raise chickens, and those growers owned their own lands, agricultural implements, hatcheries, and the litter produced by the chickens they raised. George's denies generally and specifically each and every remaining allegation, statement, and assertion contained and set forth in Paragraph 15 of the First Amended Complaint of plaintiffs, including particularly the characterizations of poultry litter implied or stated and the alleged results of land application of poultry litter implied or stated in the said Paragraph 15.

16. That Separate Defendant, George's Farms, Inc., admits it is an Arkansas corporation with its principal place of business in Arkansas. Moreover, it denies that it "is responsible for the poultry waste created by . . . poultry growing operations, its handling and storage, and its disposal on lands within the IRW, . . ." George's also denies any resulting injury to the IRW, its biota, lands, waters and sediments. George's denies familiarity with the term "Poultry Integrator Defendant". George's acknowledges that during the relevant years, it was engaged in the business of breeding chickens, producing chicken eggs, hatching chickens, processing chickens for human consumption, and selling processed chicken products. George's also contracted with independent contract growers to raise chickens, and those growers owned their own lands, agricultural implements, hatcheries, and the litter produced by the chickens they raised. George's denies generally and specifically each and every remaining allegation, statement, and assertion contained and set forth in Paragraph 15 of the First Amended Complaint of plaintiffs, including particularly the characterizations of poultry litter implied or stated and the alleged results of land application of poultry litter implied or stated in the said Paragraph 15.

17. That the allegations of Paragraph 17 of the First Amended Complaint do not apply to George's, and George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained therein. Accordingly, George's denies the allegations of Paragraph.

18. That the allegations of Paragraph 18 of the First amended Complaint do not apply to George's, and George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained therein. Accordingly, George's denies the allegations of Paragraph 18.

19. That the allegations of Paragraph 19 of the First amended Complaint do not apply to George's, and George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained therein. Accordingly, George's denies the allegations of Paragraph 19.

20. That to the extent that Paragraph 20 purports to characterize the First Amended Complaint, that pleading speaks for itself, and George's refers the Court to the Complaint. George's does not agree to be bound by any arbitrary or artificial definitions of terms created by plaintiffs, or to the conclusory statements made in Paragraph 20 of the First Amended Complaint. Accordingly, George's denies the allegations of Paragraph 20.

21. That to the extent that Paragraph 21 purports to characterize the First Amended Complaint, that pleading speaks for itself, and George's refers the Court to the Complaint. George's does not agree to be bound by any arbitrary or artificial definitions of terms created by plaintiffs, or to the conclusory statements made in Paragraph 21 of the First Amended Complaint. Accordingly, George's denies the allegations of Paragraph 21.

ALLEGATIONS

22. That George's admits the allegations of Paragraph 22 of the First Amended Complaint.

23. That George's denies that Barren Fork or Baron Fork Creek is a "river". George's admits the remaining allegations of Paragraph 23 of the First amended Complaint.

24. That George's denies the conclusory and self-serving statements set forth in Paragraph 24 of the First Amended Complaint.

25. That George's denies the conclusory and self-serving statements set forth in Paragraph 25 of the First Amended Complaint.

26. That George's denies the conclusory and self-serving statements set forth in Paragraph 26 of the First Amended Complaint.

27. That George's admits the allegations of Paragraph 27 of the First Amended Complaint.

28. That George's admits the allegations of Paragraph 28 of the First Amended Complaint.

29. The allegations in Paragraph 29 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, George's denies allegations in Paragraph 29. Pleading affirmatively, George's states that declining or "degrading" water quality through eutrophication, erosion, sedimentation and other factors is a natural and expected part of the life cycle of all reservoirs and impounded river systems. George's has insufficient information and knowledge to form a belief as to the truth of the any remaining allegations contained in Paragraph

29 of plaintiffs' First Amended Complaint, and denies that George's has caused any pollution or other degradation, damage, injury or impairment as alleged in Paragraph 29. George's denies the remaining allegations of Paragraph 29.

30. That George's denies generally and specifically each and every allegation, statement and assertion contained and set forth in Paragraph 30 of the First Amended Complaint.

31. That George's denies that it "is responsible for . . . pollution" of the IRW, and denies that it has engaged in disposal practices resulting injury to the IRW, its biota, lands, waters and sediments. George's denies familiarity with the term "Poultry Integrator Defendants". George's denies generally and specifically each and every remaining allegation, statement, and assertion contained and set forth in Paragraph 31 of the First Amended Complaint of plaintiffs.

32. That George's denies familiarity with the term "Poultry Integrator Defendants". George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 32 of plaintiffs' First Amended Complaint regarding other defendants in the case, and the same is therefore denied. George's admits that it processes poultry and/or poultry products for sale and use/consumption in the United States and internationally. George's denies generally and specifically each and every remaining allegation, statement, and assertion contained and set forth in Paragraph 32 of the First Amended Complaint of plaintiffs.

33. That George's denies familiarity with the term "Poultry Integrator Defendants". George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 33 of plaintiffs' First Amended Complaint regarding other defendants in the case, and the same is therefore denied. George's denies that it is "intimately involved in and controls each stage of the poultry growing process."

34. That George's denies familiarity with the term "Poultry Integrator Defendants". George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 33 of plaintiffs' First Amended Complaint regarding other defendants in the case, and the same is therefore denied. George's admits that it raises birds itself and contracts with independent contract growers to raise some of its birds. George's denies each and every remaining allegation contained in Paragraph 34.

35. That George's denies each and every allegation contained in Paragraph 35 of the First Amended Complaint.

36. That George's admits that, to the extent birds are raised under a contract with an independent contract grower, they are raised to a certain age pursuant to the terms of the written contract, which speaks for itself. George's denies each and every remaining allegation contained in Paragraph 36.

37. That George's denies familiarity with the term "Poultry Integrator Defendants". George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 37 of plaintiffs' First Amended Complaint regarding other defendants in the case, and the same is therefore denied. George's admits that, to the extent birds are raised under a contract with an independent contract grower, they are raised to a certain age pursuant to the terms of the written contract, which speaks for itself. George's denies each and every remaining allegation contained in Paragraph 37.

38. That George's denies familiarity with the term "Poultry Integrator Defendants". George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 38 of plaintiffs' First Amended Complaint regarding other

defendants in the case, and the same is therefore denied. George's admits that it owns the birds raised by the independent contract growers throughout the entire growing process.

39. That George's denies familiarity with the term "Poultry Integrator Defendants". George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 39 of plaintiffs' First Amended Complaint regarding other defendants in the case, and the same is therefore denied. George's admits that it formulates, provides and owns the feed that is fed to the birds, and that the feed formula would have an effect on constituents found in poultry litter. George's denies each and every remaining allegation contained in Paragraph 39.

40. That George's denies familiarity with the term "Poultry Integrator Defendants". George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 40 of plaintiffs' First Amended Complaint regarding other defendants in the case, and the same is therefore denied. George's admits that the contract between it and the independent contract grower sets out the terms of what can be fed to the birds owned by George's. George's denies the remaining allegations contained in Paragraph 40 of the First Amended Complaint, including the subparts.

41. That George's denies familiarity with the term "Poultry Integrator Defendants". George's has insufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 41 of plaintiffs' First Amended Complaint regarding other defendants in the case, and the same is therefore denied. George's admits that its representatives may visit a contract grower's farm from time to time during the growout cycle to provide advice and technical assistance to the grower. George's denies each and every remaining allegation contained in Paragraph 41 of the First Amended Complaint.

42. That George's denies each and every allegation contained in Paragraph 42 of the First Amended Complaint.

43. That George's denies each and every allegation contained in Paragraph 43 of the First Amended Complaint.

44. That George's denies each and every allegation contained in Paragraph 44 of the First Amended Complaint.

45. That George's admits that it has farms which are owned or operated by the company for the raising of birds that are located in the IRW. George's denies each and every remaining allegation contained in Paragraph 45 of the First Amended Complaint.

46. That George's lacks familiarity with all of the poultry operations in the IRW and with the use of the term "waste" in conjunction with poultry litter. George's therefore denies each and every allegation contained in Paragraph 46 of the First Amended Complaint.

47. That George's denies each and every allegation contained in Paragraph 47 of the First Amended Complaint.

48. That George's denies each and every allegation contained in Paragraph 48 of the First Amended Complaint.

49. That George's denies that utilization of the term "waste" is appropriate and admits that poultry litter has been utilized as an inexpensive and effective organic fertilizer by many people within the watershed, principally for the purpose of growing forage for the generation of hay and the propagation of cattle pastures. All of such activities are legal, are in accord with Arkansas and Oklahoma law, are and have been historically pursued and are beneficial to the Oklahoma public and lands.

50. That George's denies each and every allegation contained in Paragraph 50 of the First Amended Complaint.

51. That George's denies each and every allegation contained in Paragraph 51 of the First Amended Complaint.

52. That George's denies each and every allegation contained in Paragraph 52 of the First Amended Complaint.

53. That George's denies each and every allegation contained in Paragraph 53 of the First Amended Complaint.

54. That George's denies each and every allegation contained in Paragraph 54 of the First Amended Complaint.

55. That George's denies each and every allegation contained in Paragraph 55 of the First Amended Complaint.

56. That George's denies each and every allegation contained in Paragraph 56 of the First Amended Complaint.

57. That George's denies each and every allegation contained in Paragraph 57 of the First Amended Complaint.

58. That George's denies each and every allegation contained in Paragraph 58 of the First Amended Complaint, including the subparts.

59. That George's denies each and every allegation contained in Paragraph 59 of the First Amended Complaint.

60. That George's denies each and every allegation contained in Paragraph 60 of the First Amended Complaint.

61. That George's denies each and every allegation contained in Paragraph 61 of the

First Amended Complaint.

62. That George's denies each and every allegation contained in Paragraph 62 of the First Amended Complaint.

63. That George's denies each and every allegation contained in Paragraph 63 of the First Amended Complaint.

64. That George's denies each and every allegation contained in Paragraph 64 of the First Amended Complaint.

65. That George's denies each and every allegation contained in Paragraph 65 of the First Amended Complaint.

66. That George's denies familiarity with the term "Poultry Integrator Defendants". George's admits that it was a signatory to the referenced open letter, which speaks for itself. George's denies each and every remaining allegation contained in Paragraph 66 of the First Amended Complaint.

67. That George's denies familiarity with the term "Poultry Integrator Defendants". George's admits that it was a signatory to the referenced open letter, which speaks for itself. George's denies each and every remaining allegation contained in Paragraph 67 of the First Amended Complaint.

68. That George's denies each and every allegation contained in Paragraph 68 of the First Amended Complaint.

69. That George's denies each and every allegation contained in Paragraph 69 of the First Amended Complaint.

70. That the allegations of Paragraph 70 require no response, and therefore George's denies the same.

71. That George's denies each and every allegation contained in Paragraph 71 of the First Amended Complaint.

72. That George's denies each and every allegation contained in Paragraph 72 of the First Amended Complaint.

73. That George's denies each and every allegation contained in Paragraph 73 of the First Amended Complaint.

74. That George's denies each and every allegation contained in Paragraph 74 of the First Amended Complaint.

75. That George's denies each and every allegation contained in Paragraph 75 of the First Amended Complaint.

76. That George's denies each and every allegation contained in Paragraph 76 of the First Amended Complaint.

77. That George's denies each and every allegation contained in Paragraph 77 of the First Amended Complaint.

78. That the allegations of Paragraph 78 require no response, and therefore George's denies the same.

79. That George's lacks sufficient information to admit or deny the allegations of Paragraph 79. Therefore, for purposes of this pleading, they are denied.

80. That George's denies each and every allegation contained in Paragraph 80 of the First Amended Complaint.

81. That George's denies each and every allegation contained in Paragraph 81 of the First Amended Complaint.

82. That George's denies each and every allegation contained in Paragraph 82 of the First Amended Complaint.

83. That George's denies each and every allegation contained in Paragraph 83 of the First Amended Complaint.

84. That George's denies each and every allegation contained in Paragraph 84 of the First Amended Complaint.

85. That George's denies each and every allegation contained in Paragraph 85 of the First Amended Complaint.

86. That George's denies each and every allegation contained in Paragraph 86 of the First Amended Complaint.

87. That George's denies each and every allegation contained in Paragraph 87 of the First Amended Complaint.

88. That George's denies each and every allegation contained in Paragraph 88 of the First Amended Complaint.

89. That George's denies each and every allegation contained in Paragraph 89 of the First Amended Complaint.

90. That the allegations of Paragraph 90 require no response, and therefore George's denies the same.

91. That George's admits it received a copy of the described letter. George's denies each and every remaining allegation contained in Paragraph 91 of the First Amended Complaint.

92. That George's denies each and every allegation contained in Paragraph 92 of the First Amended Complaint.

93. That George's denies each and every allegation contained in Paragraph 93 of the First Amended Complaint.

94. That George's denies each and every allegation contained in Paragraph 94 of the First Amended Complaint.

95. That George's denies each and every allegation contained in Paragraph 95 of the First Amended Complaint.

96. That George's denies each and every allegation contained in Paragraph 96 of the First Amended Complaint.

97. That George's denies each and every allegation contained in Paragraph 97 of the First Amended Complaint.

98. That the allegations of Paragraph 98 require no response, and therefore George's denies the same.

99. That George's denies each and every allegation contained in Paragraph 99 of the First Amended Complaint.

100. That George's denies each and every allegation contained in Paragraph 100 of the First Amended Complaint.

101. That George's denies each and every allegation contained in Paragraph 101 of the First Amended Complaint.

102. That George's denies each and every allegation contained in Paragraph 102 of the First Amended Complaint.

103. That George's denies each and every allegation contained in Paragraph 103 of the First Amended Complaint.

104. That George's denies each and every allegation contained in Paragraph 104 of the First Amended Complaint.

105. That George's denies each and every allegation contained in Paragraph 105 of the First Amended Complaint.

106. That George's denies each and every allegation contained in Paragraph 106 of the First Amended Complaint.

107. That George's denies each and every allegation contained in Paragraph 107 of the First Amended Complaint.

108. That George's denies each and every allegation contained in Paragraph 108 of the First Amended Complaint.

109. That the allegations of Paragraph 109 require no response, and therefore George's denies the same.

110. That George's denies each and every allegation contained in Paragraph 110 of the First Amended Complaint.

111. That George's denies each and every allegation contained in Paragraph 111 of the First Amended Complaint.

112. That George's denies each and every allegation contained in Paragraph 112 of the First Amended Complaint.

113. That George's denies each and every allegation contained in Paragraph 113 of the First Amended Complaint.

114. That George's denies each and every allegation contained in Paragraph 114 of the First Amended Complaint.

115. That George's denies each and every allegation contained in Paragraph 115 of the

First Amended Complaint.

116. That George's denies each and every allegation contained in Paragraph 116 of the First Amended Complaint.

117. That George's denies each and every allegation contained in Paragraph 117 of the First Amended Complaint.

118. That George's denies each and every allegation contained in Paragraph 118 of the First Amended Complaint.

119. That the allegations of Paragraph 119 require no response, and therefore George's denies the same.

120. That George's denies each and every allegation contained in Paragraph 120 of the First Amended Complaint.

121. That George's denies each and every allegation contained in Paragraph 121 of the First Amended Complaint.

122. That George's denies each and every allegation contained in Paragraph 122 of the First Amended Complaint.

123. That George's denies each and every allegation contained in Paragraph 123 of the First Amended Complaint.

124. That George's denies each and every allegation contained in Paragraph 124 of the First Amended Complaint.

125. That George's denies each and every allegation contained in Paragraph 125 of the First Amended Complaint.

126. That George's denies each and every allegation contained in Paragraph 126 of the First Amended Complaint.

127. That George's denies each and every allegation contained in Paragraph 127 of the First Amended Complaint.

128. That the allegations of Paragraph 128 require no response, and therefore George's denies the same.

129. That George's denies each and every allegation contained in Paragraph 129 of the First Amended Complaint.

130. That George's denies each and every allegation contained in Paragraph 130 of the First Amended Complaint.

131. That George's denies each and every allegation contained in Paragraph 131 of the First Amended Complaint.

132. That George's denies each and every allegation contained in Paragraph 132 of the First Amended Complaint.

133. That the allegations of Paragraph 133 require no response, and therefore George's denies the same.

134. That George's denies each and every allegation contained in Paragraph 134 of the First Amended Complaint.

135. That George's denies each and every allegation contained in Paragraph 135 of the First Amended Complaint.

136. That George's denies each and every allegation contained in Paragraph 136 of the First Amended Complaint.

137. That the allegations of Paragraph 137 require no response, and therefore George's denies the same.

138. That George's denies each and every allegation contained in Paragraph 138 of the First Amended Complaint.

139. That George's denies each and every allegation contained in Paragraph 139 of the First Amended Complaint.

140. That the allegations of Paragraph 140 require no response, and therefore George's denies the same.

141. That George's denies each and every allegation contained in Paragraph 141 of the First Amended Complaint.

142. That George's denies each and every allegation contained in Paragraph 142 of the First Amended Complaint.

143. That George's denies each and every allegation contained in Paragraph 143 of the First Amended Complaint.

144. That George's denies each and every allegation contained in Paragraph 144 of the First Amended Complaint.

145. That George's denies each and every allegation contained in Paragraph 145 of the First Amended Complaint.

146. That George's denies each and every allegation contained in Paragraph 146 of the First Amended Complaint.

147. That George's denies each and every allegation contained in Paragraph 147 of the First Amended Complaint.

148. Plaintiffs' Complaint fails to state a claim upon which relief may be granted and must therefore be dismissed.

149. Plaintiffs' Complaint fails to state a claim for relief under CERCLA in that it does not allege the release or threat of release of any hazardous substance.

150. Plaintiffs' Complaint fails to state a claim for relief under CERCLA because it does not allege the release or threat of release of any substance that is not subject to the fertilizer exemption of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

151. Plaintiffs' Complaint fails to state a claim for relief under CERCLA because it does not allege the release or threat of any substance that is not subject to the exemption for federally permitted releases provided by Section 101(10) of CERCLA, 42 U.S.C. §9601(10).

152. George's has no liability under CERCLA in this matter because it does not fall within any of the four classes of persons who may have liability under Section 107(a) of CERCLA.

153. George's denies that it is a responsible party under CERCLA; however, if George's did discharge any amount of hazardous substances, the amounts were insignificant and, therefore, under the principles of *de minimis non curate lex*, the CERCLA count of the Complaint should be dismissed.

154. The Court has no jurisdiction over Plaintiffs' CERCLA claim, and the Plaintiffs are not entitled to recovery under CERCLA of any costs or expenses allegedly incurred by them in response to the alleged releases and discharges, because Plaintiffs have not complied with Section 113(1) of CERCLA and because any costs or expenses incurred by Plaintiffs were neither necessary nor incurred consistent with the National Contingency Plan.

155. Plaintiffs are not entitled to recovery under CERCLA of any costs or expenses allegedly incurred by them in response to the alleged releases and discharges of wastes because the alleged releases and discharges occurred, if at all, through the acts or omissions of a third party or parties other than an employee or agent of George's. and other than a third party whose acts or

omissions occurred in connection with a contractual relationship with George's, and George's exercised due care with respect to the wastes, taking their characteristics into consideration in light of relevant facts and circumstances, and taking precautions against foreseeable acts and omissions of such third party or parties and the consequences that could foreseeably result from such acts and omissions.

156. Any "response costs and expenses" allegedly incurred by Plaintiffs do not constitute costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 USCA 9601(25) and any such costs and expenses were not incurred consistent with the national contingency plan promulgated by the United States Environmental Protection Agency ("USEPA") pursuant to Section 105 of CERCLA, 42 USCA 9605.

157. Under the Supreme Court's decision in *U.S. v. Key Tronic Corp.*, the Plaintiffs cannot recover those attorneys' fees relating to their CERCLA claim.

158. The purported causes of the alleged contamination are divisible and there is a reasonable basis for apportioning the alleged harm. Accordingly, there is no basis for joint and several liability under CERCLA.

159. All poultry litter utilized as an organic fertilizer and generated by growers having contracts with George's is, on information and belief, disposed of through land application and other means that are fully in compliance with applicable law.

160. The products referenced in the Complaint are consumer products as defined in §101(9) of CERCLA.

161. The activities described in the Complaint did not involve the arrangement for treatment or disposal of hazardous substances as defined by §107(a)(3) of CERCLA.

162. George's has not directly, or indirectly, disposed of any "hazardous waste" as that term is defined in the Solid Waste Disposal Act, as incorporated into CERCLA.

163. Plaintiffs have failed to mitigate their damages, thereby barring or diminishing any recovery.

164. Conduct of George's is not the proximate cause of any injuries or damages suffered by Plaintiffs.

165. The allegations set forth in Plaintiffs' Complaint do not establish a violation of any state or federal statute.

166. The conduct and conditions alleged by Plaintiffs in their Complaint do not constitute a recurring and permanent nuisance.

167. The Plaintiffs' nuisance claims are barred because George's, as well as the independent contract growers with whom George's contracts, have made reasonable use of their properties and the social utility of utilizing poultry litter as fertilizer outweighs Plaintiffs' unfounded claim of harm.

168. The Plaintiffs do not state a cause of action for nuisance because the Plaintiffs have neither alleged nor suffered a particularized injury.

169. Plaintiffs' injuries and damages, if any, are the result of their own acts, omissions, carelessness and/or negligence, thereby barring or diminishing any recovery. Plaintiffs' negligence establishes their duty to prove their allegations against each of these Defendants severally.

170. Plaintiffs' injuries and damages, if any, are the result of the negligence or other fault of third persons or entities over whom George's has no control.

171. None of the actions alleged to have been taken by George's constitutes negligence per se.

172. Plaintiffs' injuries and damages, if any, are the result of acts of God and/or other natural or artificial factors beyond George's control.

173. The Plaintiffs' claims are barred under the doctrine of assumed or incurred risks.

174. Plaintiffs' claims are barred by the applicable statutes of limitation.

175. The issues and/or claims asserted by Plaintiffs are barred by the doctrines of laches, waiver and unclean hands.

176. George's has not been unjustly enriched by any conduct alleged.

177. The contract growers associated with George's are not, as a matter of law, agents or employees of the company.

178. George's neither owned nor operated the respective contract growers' facilities.

179. George's has neither the ability nor authority to control or affect the timing, manner and location of the application of poultry litter by independent contract growers.

180. To the extent Plaintiffs attempt to characterize the time period encompassed by the allegations in the Complaint as a period of continuing violations, said characterization is incorrect and should be stricken and dismissed.

181. All allegations in the Complaint which attempt to assert Plaintiffs' right to recovery due to purported violations, directly or indirectly, of the general water quality criteria in the Oklahoma Administrative Code should be stricken and dismissed for failure to state a claim, because: (a) the general criteria are not enforceable in that they are void for vagueness; (b) no scientific assessment has been performed to determine whether the general criteria were violated; and (c) no showing has been made or can be made to establish that George's caused violations of the general criteria.

182. To the extent Plaintiffs are asserting any claims due to purported violations of numeric or specific water quality criteria, such allegations should be stricken and dismissed for failure to state a claim because the numeric or specific criteria do not apply.

183. No relief should be awarded to Plaintiffs because neither Plaintiffs nor any other agency has prepared Total Maximum Daily Loadings pursuant to the applicable authorities of the Clean Water Act allocating loadings and/or waste loads for any of the water bodies referenced in the Complaint.

184. No relief should be awarded to Plaintiffs because Plaintiffs have not and cannot establish that any applicable water quality standard has been violated by George's or that George's has caused pollution to the water supply.

185. Damages should not be assessed against George's because, at all times relevant hereto, the potential for harm and the extent of deviation from any applicable requirements, if either could be shown, do not support an award of damages.

186. Plaintiffs cannot establish any compensable damages for the claims asserted in their Complaint.

187. No injunctive relief should be awarded because Plaintiffs have an adequate remedy at law.

188. No injunctive relief should be awarded because Plaintiffs have not suffered irreparable harm.

189. No injunctive relief should be awarded because Plaintiffs have not sued indispensable parties, i.e. all nutrient contributors in the watershed.

190. Based upon the allegations made by Plaintiffs in their Complaint, no award of punitive damages is justified.

191. An award of punitive damages would violate provisions of the Constitution of the United States, including, but not limited to: Article I, Section 8; Article I, Section 9; Article I, Section 10; Article III, Section 2; and the Fifth, Sixth, Eighth and Fourteenth Amendments, as well as similar applicable provisions of the Oklahoma and Arkansas state constitutions.

192. Plaintiffs have failed to join an indispensable party or parties.

193. George's adopts and incorporates by reference all affirmative defenses presently or subsequently asserted by any of its co-defendants.

193. Any recovery by Plaintiffs cannot be utilized to pay contingency attorney fees.

194. To the extent that liability under the Complaint is predicated on the claim that independent poultry farmers are or were the servants, employees or agents of George's, all such claims are preempted by the provisions of the Packers and Stockyards Act, 7 U.S.C. §181, *et seq.*

195. The state common law claims of nuisance, trespass and unjust enrichment are precluded by the existence and provisions of the Oklahoma Registered Poultry Feeding Operations Act, OKLA. STAT., tit. 2 §9-201, *et seq.* and the Oklahoma Concentrated Animal Feeding Operations Act, OKLA. STAT., tit. 2 §9-201, *et seq.*

196. The Complaint's claim for "cost recovery" under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, *et seq.*, is barred by the Plaintiffs' status as a potentially responsible party.

197. The state law claims in the First Amended Complaint are barred under the doctrines of state sovereignty and comity. The claims amount to an impermissible attempt by the State of Oklahoma to use its own common law tort theories of liability to restrict or modify the regulatory authority of the State of Arkansas, and to impose economic sanctions on the Defendants with the intent of changing Defendants' lawful conduct in the State of Arkansas.

198. The common law claims asserted in Counts 4, 6, and 10 of the First Amended Complaint are precluded by Oklahoma's statutory and regulatory programs governing the conduct at issue.

199. The common law claims asserted in Counts 7, 8, and 9 are barred under the doctrine of primary jurisdiction.

200. George's is not associated with or affiliated with any of the other Defendants, and George's has not otherwise acted in concert or combination with any other Defendant. The First Amended Complaint improperly and incorrectly attempts to group George's in with other defendants under the designation, "Poultry Integrators." George's is not responsible for the actions of any of the other defendants herein.

201. That George's denies any damage has been sustained by plaintiffs, but asserts that if any damage has been sustained by plaintiffs such damage was caused by persons or intervening causes outside the control of George's and for whom George's was not responsible.

202. That plaintiffs' damages, if any, are the result of their own negligence or other fault which contributed to or exceeded the negligence, if any, of all other parties combined.

203. That plaintiffs cannot establish any compensable damages for the claims asserted in their Complaint.

204. That plaintiffs' claims are barred to the extent they rely on the retroactive application of statutes, rules, regulations and common-law standards of conduct, which violates the Constitutions of the United States of America and the States of Oklahoma and Arkansas.

205. George's reserves the right to assert any and all additional affirmative defenses which discovery may reveal to be appropriate.

206. George's reserves the right to amend its answer or otherwise plead in response to Plaintiffs' Complaint.

207. George's denies that the Plaintiffs are entitled to any of the relief requested in their prayer for relief in the First Amended Complaint.

208. George's generally and specifically denies any allegations, statement or assertion not specifically admitted herein.

WHEREFORE, PREMISES CONSIDERED, George's, Inc., and George's Farms, Inc., pray that the Complaint(s) and amendments thereto by plaintiffs as asserted against George's, Inc. and George's Farms, Inc. be dismissed with prejudice to re-filing, for its costs and attorneys' fees, and for all other just and proper relief.

s/ Randall E. Rose

Randall E. Rose

OBA #7753

Attorney for Defendants George's Inc.
and George's Farms, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2005, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I further certify that on October 3, 2005, I served the foregoing document by regular mail through the United States Postal Service, postage properly paid, on the following, who are not registered participants of the ECF System:

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